

From: Cox, Douglas R. [DCox@gibsondunn.com]
Sent: Tuesday, September 07, 2004 9:43 AM
To: Todd Nelson (E-mail); Robert T. Collins (E-mail); Kenda B. Gonzales (E-mail); Hatch, Timothy J.
Cc: sfreeman@ppsv.com; Vic Klatt (E-mail)
Subject: FYI -- Executed Settlement Agreement
Attachments: Settleme.pdf



Settleme.pdf (170 KB)

PRIVILEGED AND CONFIDENTIAL, ATTORNEY-CLIENT COMMUNICATION

The executed settlement agreement. Victoria Edwards has a new title. Bob, I will UPS the original to you.

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UNITED STATES DEPARTMENT OF EDUCATION

IN THE MATTER OF
THE UNIVERSITY OF PHOENIX

SETTLEMENT AGREEMENT

The United States Department of Education (the "Department") and the University of Phoenix Inc. and Western International University Inc. (together "UOP") enter into this Settlement Agreement ("Agreement") for the purpose of resolving the Department's program review regarding compliance by UOP with 20 U.S.C. §1094(a)(20) (the "statute") and 34 C.F.R. §668.14(b)(22) (the "regulation") during the period from September 1, 1998 through June 30, 2004. To avoid the burdens and expenses of continuing the program review, and any other or future Department proceedings or litigation that may arise from the program review, except as referenced in paragraph I.E., and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereby agree to resolve the program review as follows:

I.

A. The Department reviewed UOP's methods of compensating recruiters of students (the "methods") during the period from September 1, 1998 through February 29, 2004 and UOP's implementation of the methods (the "implementation"), and the Department issued a program review report, dated February 5, 2004. The program review report was one step in an ongoing process designed to foster institutional compliance with the law. The program review report explicitly invited and anticipated review and response by UOP. UOP provided the Department with a response to the program review report, including statistical analyses addressing and purporting to rebut the program review report's conclusions. UOP strongly disputes the program review report's methodology and conclusions. This Agreement resolves all issues raised in the program review report, and no final program review determination has been or will be issued.

B. This Agreement, and all negotiations relating to it, and any proceedings taken hereunder, are not an admission or concession by either party of any liability, wrongdoing or violation whatsoever. But to resolve the program review, and to avoid the cost of future litigation, UOP agrees to pay the sum of \$9,800,000 to the Department. UOP will make this payment by sending a check made payable to the "U.S. Department of Education," within 15 calendar days of receiving a copy of this Agreement that has been fully executed by both parties, to the following address:

Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Room 6E300
Washington, D.C. 20202

C. The Department acknowledges that recently published revisions to the regulation clarify the scope and meaning of the statute. *See* Federal Student Aid Programs, 67 Fed. Reg. 67048, 67049 (Nov. 1, 2002) (codified at 34 C.F.R. § 668.14) (effective July 1, 2003) (amending § 668.14 “to clarify the statutory program participation agreement provision concerning incentive payment restrictions”).

D. This Agreement does not waive, compromise, restrict or settle any future actions against UOP by the Department pursuant to 34 C.F.R. Part 668, Subparts G and H for any alleged violation of the statute or the regulation that occurs outside of the time period covered by the program review. This Agreement also does not waive, compromise, restrict or settle any past, present or future actions by the Department pursuant to 34 C.F.R. Part 668, Subparts G and H that are unrelated to the program review.

E. The Department does not have the authority to, and this Agreement does not, waive, compromise, restrict or settle any past, present or future violations by UOP, its trustees, officers or employees of the criminal laws of the United States or any action initiated against UOP, its trustees, officers or employees for civil fraud against the United States under 31 U.S.C. §§ 3729-33. Notwithstanding the preceding sentence, the Department warrants and acknowledges that it is not presently aware of any investigations, regulatory proceedings, or administrative or enforcement actions currently contemplated by, or pending before the Department or any other federal agency that relate to the methods or implementation.

F. Subject to paragraphs I.D. and I.E. of this Agreement, the program review is hereby officially closed and the Department will not (i) undertake any further administrative investigation, audit, review, analysis, examination, inquiry, probe or proceeding whatsoever regarding the methods or the implementation during the period of September 1, 1998 through June 30, 2004; (ii) institute or pursue any other or future administrative action or proceeding against UOP with respect to, arising out of or in any way relating to the methods or the implementation during the period of September 1, 1998 through June 30, 2004; or (iii) impose on UOP any penalty, repayment liability, administrative fine or other sanction (including, without limitation, changing the method by which the institution requests, and the Department provides, federal student financial aid) with respect to, arising out of or in any way relating to the methods or the implementation during the period of September 1, 1998 through June 30, 2004. The Department acknowledges and agrees that this Agreement does not constitute a basis for: a) asserting that UOP lacks administrative capability or financial responsibility under 34 C.F.R. § 668.15, 34 C.F.R. § 668.16, or 34 C.F.R. Part 668, Subpart L; or b) placing or maintaining UOP under a provisional form of Title IV Program Participation Agreement.

II.

A. Each party agrees to pay its own costs with regard to the program review and settlement.

B. UOP and the Department each warrant and represent that its undersigned representative is authorized to sign this Agreement on its behalf and bind that party to all of the terms and provisions herein.

C. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between counsel for the parties, and the parties themselves, with respect to the matters provided for herein. Any amendment to this Agreement must be in writing and signed by the parties to this Agreement or their successors.

D. Each of the parties participated and cooperated in the drafting and preparation of this Agreement. Accordingly, the parties agree that neither this Agreement nor its terms should be construed against either of the parties by reason of its lack of participation in the drafting or preparation of the Agreement.


UOP and the Department have each read this Agreement, understand the terms and provisions herein and cause this Agreement to be executed by its duly authorized representative.

DATED: 9/3, 2004



Todd S. Nelson
Chairman and Chief Executive Officer
Apollo Group, Inc.

DATED: 9/7, 2004



Victoria Edwards
~~Acting Director~~ *general Manager*
~~Case Management & Oversight~~ *School Eligibility*
Federal Student Aid *Channel*
United States Department of Education